



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 421 OF 2017**

*(Before Hon. Justice Mathews N. Nduma)*

**FREDRICK OTIENO OSWE.....CLAIMANT**

**VERSUS**

**SPECTRE INTERNATIONAL CO. LIMITED.....1<sup>ST</sup> RESPONDENT**

**EQUITY BANK (K) LIMITED.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant has a loan with the 2<sup>nd</sup> Respondent, Equity Bank Limited, which loan has fallen into arrears and due to alleged default by the 2<sup>nd</sup> Respondent, the employer of the Applicant.
2. The 2<sup>nd</sup> Respondent has deducted monthly loan repayment instalments from the Applicant's salary but has failed and/or neglected to remit the same to the 2<sup>nd</sup> Respondent.
3. The Applicant's loan agreement is with the 2<sup>nd</sup> Respondent and the 1<sup>st</sup> Respondent is a third party to the said Loan Agreement.
4. The Applicant clearly has a cause of action against the 1<sup>st</sup> Respondent for failure to remit monies deducted from his salary to the 2<sup>nd</sup> Respondent to applicant's loss and detriment. It is not alleged that the 1<sup>st</sup> Respondent was a guarantor to the loan. The loan was however given on the strength of the monthly salary paid to the Claimant by the 1<sup>st</sup> Respondent.
5. At this stage of the case, the question is whether the Applicant has made out a prima facie case as against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
6. Clearly the Claimant has a prima facie case against the 1<sup>st</sup> Respondent but not so as against the 2<sup>nd</sup> Respondent.
7. The injunction sought in prayers (4) and (5) pending the hearing of the suit are as against both Respondents in prayer 4 and against 2<sup>nd</sup> Respondent in prayer 5.
8. The Applicant has failed to show a prima facie case with probability of success as against the 2<sup>nd</sup> Respondent. Accordingly, the application fails as against the 2<sup>nd</sup> Respondent.
9. However, a mandatory interim injunction is issued as against the 1<sup>st</sup> Respondent not to further deduct any salary from the Applicant and to render to the court, Claimant and 2<sup>nd</sup> Respondent within 30 days, an account of all the monies deducted from the salary of the Applicant and remitted or not remitted to the 2<sup>nd</sup> Respondent.

**Ruling Dated, Signed and delivered this 6th day of December, 2018**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Maube & Co. advocates for the Applicant

Olel, Onyango, Ingutiah & Co. adv. for the 2<sup>nd</sup> Respondent

Chrispo – Court Clerk